

STATEMENT OF SENATOR RICHARD J. DURBIN

“DRIVER’S LICENSE FRAUD PREVENTION ACT”

October 10, 2002

Mr. President, I rise to introduce the Driver’s License Fraud Prevention Act. This is a timely bill that would provide much needed federal assistance to the states to help make their driver’s licenses more reliable and secure than they are today. I am pleased that my colleague, Senator McCain, has joined me in this effort.

Since September 11, 2001, we have learned much about our society. We learned in the most painful way that those aspects of our open society that we, as Americans, value the most, are the very same characteristics exploited by people who hate freedom.

Our open borders welcome millions of visitors and immigrants each year. Our civil society is based on the integrity of our citizens to self regulate their behaviors and to abide by the rule of law. And our very informal system of personal identification relies on the honesty of people to represent themselves as who they are, and to not hide their true identities.

Yet, after September 11, we learned that it was the very openness of our society that the nineteen terrorists took advantage of by slipping into our country and mingling among us for months before embarking on their evil tasks.

Since that tragic day, as a price for enhancing national security, we have imposed numerous measures across the country, including erecting barricades in front of buildings and requiring tougher screenings at airports. But there is one area that we need further improvements on, which is what our bill would address.

It seems that everywhere we turn today, we are asked to present photo identification. And what is the most common identification that we show? It’s the state-issued driver’s license.

The purpose of the driver’s license has changed dramatically over the years. The driver’s license was originally created by states for a public safety purpose, to permit a qualified person to operate a motor vehicle. Today, however, the license has become the most widely-used form of identification that is accepted by a wide variety of private and public entities. In an April 2002 poll conducted by Public Opinion Strategies, 83 percent of the American public noted that they used their driver’s license for purposes other than driving.

A driver’s license has undoubtedly become a key that can open many doors, yet the current framework that states rely on in issuing licenses was not designed for the cards to be used for identification purposes. Today, the 50 states follow 50 different methods for verifying a person’s identification when they process driver’s license applications. They apply different standards for defining what the acceptable documentations are that they require from applicants.

Additionally, the level of security in the driver's licenses and identification cards varies widely, from those states that incorporate high tech biometric identifiers to ones that are simply laminated. In fact, law enforcement officials estimate that there are more than 240 different formats of valid driver's licenses in circulation today.

Because of the disparity in the state issuance processes and the varying degrees of security of the cards themselves, it is extremely easy for individuals today to abuse the system by shopping around for licenses in those states with the weakest practices.

Earlier this year, I chaired a hearing in the Governmental Affairs Subcommittee on Oversight of Government Management, where we learned that eighteen of the nineteen hijackers involved in the September 11th attacks probably used state-issued driver's licenses or identification cards to board those doomed airplanes.

We also learned that these terrorists specifically went to motor vehicle agencies in states that, at that time, employed some of the most lenient processes and requirements in issuing licenses and identification cards.

For example, on August 1, 2001, two of the terrorists, Hani Hanjour and Khalid Al-Mihdhar, drove a van from New Jersey to the Virginia Department of Motor Vehicles (DMV) office in Arlington. In the parking lot, they asked around until they found someone willing to lie and vouch for their Virginia residency. They met Luis Martinez-Flores and Herbert Villalobos who, for a price, were willing to help.

Hanjour and Al-Mihdhar paid these strangers \$50 each and received notarized forms which claimed that the two transients were in fact Virginia residents. Using these fake documents, Hanjour and Al-Mihdhar walked into the DMV, stood in line, had their photos taken, and walked out with authentic state-issued Virginia photo identification cards.

The next day, on August 2, 2001, Hanjour and Al-Mihdhar returned to the same Arlington DMV with two other September 11 terrorists, Salem Al-Hazmi and Majed Moqed. Hanjour and Al-Mihdhar helped Al-Hazmi and Moqed obtain Virginia identification cards of their own by vouching that they lived together in Virginia.

On the same day, two more terrorists, Abdul Al-Omari and Ahmed Al-Ghamdi, who were renting a room at a Maryland motel, contacted Kenys Galicia, a Virginia legal secretary and notary public, through a referral from Luis Martinez-Flores, the same person who was loitering near the Arlington DMV the day before.

Al-Omari and Al-Ghamdi paid Galicia to have her prepare false notarized affidavits stating that the two men lived in Virginia. Using these fake documents, these two also went to a Virginia motor vehicles office and received state-issued identification cards.

In addition to exploiting the lax Virginia system, at least thirteen of the nineteen terrorists held driver licenses or identification cards from Florida, a state that, at that time, did not require proof of residency from applicants.

A few of the September 11 terrorists held licenses or identification cards from more than one state, including from California, Arizona, and Maryland, while only one did not appear to hold any form of American-issued identification. Some received duplicate cards from the same state within months of September.

Some of them used these licenses to rent automobiles and check into motels, which provided them with constant mobility. Others used licenses as identification to receive wire transferred funds and to register for flight schools.

Yet had they not held these valuable commodities, would they have been successful in carrying out their evil final acts?

At the Governmental Affairs Subcommittee hearing, we heard testimony from a Maryland police chief that, just two days before September 11th, Ziad Jarrah, one of the terrorists, was stopped for speeding on Interstate 95, north of Baltimore. During this traffic stop, Jarrah produced an apparently valid driver's license from the state of Virginia, and as a result, the stop proceeded in a typical fashion.

However, while Jarrah's license indicated a resident address in Virginia, Jarrah was in fact resting overnights at motels along the way to Newark, New Jersey, from where he boarded Flight 93, which ultimately crashed in Pennsylvania. Had he been unable to produce a license when he was pulled over, or if he had produced a license that the trooper could have identified as having been issued fraudulently, who knows how that stop may have concluded.

What we do know is that these terrorists bought their way into our shaky, unreliable, and dangerous system of government-issued identification. With the identification cards that they obtained under phony pretenses, doors opened across America, including the doors of the four doomed aircrafts on the morning of September 11, 2001.

More troubling is that it appears what the terrorists did in obtaining the multiple identification cards was a part of an official strategic plan that terrorists employ as they seek to infiltrate our society.

Last year, Attorney General Ashcroft presented to the Senate Judiciary Committee, on which I serve, a copy of an Al Qaeda Terrorist Manual that was found by Manchester, England, police officials during the search of an Al Qaeda member's home.

Contained in it is a page that reads as follows:

Forged Documents (Identity Cards, Record Books, Passports)

The following security precautions should be taken:

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2. All documents of the undercover brother, such as identity cards and passport, should be falsified.
3. When the undercover brother is traveling with a certain identity card or passport, he should know all pertinent [information] such as the name, profession, and place of residence.

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5. The photograph of the brother in these documents should be without a beard. It is preferable that the brother's public photograph [on these documents] be also without a beard. If he already has one [document] showing a photograph with a beard, he should replace it.
6. When using an identity document in different names, no more than one such document should be carried at one time.

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It is obvious to me that the September 11 terrorists were trained very well by Al Qaeda. They followed these instructions flawlessly as they sought, and successfully obtained, multiple state-issued driver's licenses and identification cards in America.

The use of fake IDs is one of the oldest tricks in the book for criminals, and now we know that this is a page in the book for terrorists as well.

It is also one of the oldest traditions of adolescence, and a rite of passage for many teenagers who casually use a borrowed or tampered ID to buy alcohol or tobacco products, or to get into a nightclub. But underage drinking not only endangers the lives of those consuming the alcohol, it threatens the lives of others as well.

According to a 2001 survey by the Substance Abuse and Mental Health Services Administration (SAMHSA), more than 10 million individuals aged between 12 to 20 years old reported consuming alcohol in the year prior to the survey. The National Highway Traffic Safety Administration (NHTSA) reports that in the United States, drivers between the ages of 16 and 21 account for just seven percent of all drivers in the nation, yet are involved in fifteen percent of all alcohol-related fatalities.

Drunk drivers are perhaps the most dangerous drivers on the road. But there are others who should not be allowed on the roads.

We learned that thousands of drivers each year operate motor vehicles using multiple licenses issued under different identities from multiple states, which enable them to evade enforcement of driving restrictions imposed on them.

They know that under the current license issuance process, no state checks the background of license applicants with its sister states to see if that person may have already been issued a license by another state. So it is quite easy for individuals who have had their licenses suspended or revoked in one state to travel to a neighboring state and acquire a new license.

A representative of the American Association of Motor Vehicle Administrators (AAMVA) who testified at our hearing stated it this way: "Although the current system allows for reciprocity among the states, it lacks uniformity. Individuals looking to undermine the system, whether it is a terrorist, a drunk driver or an identity thief, shop around for licenses in those states that have become the weakest link."

AAMVA is a nonprofit voluntary association representing all motor vehicle agency administrators and chief law enforcement officials throughout the United States and Canada.

At the hearing, we also heard from a representative of the National Governors Association (NGA), who testified that the NGA has not yet developed an official position on the subject of identity security or enhancing the driver's license systems.

However, he acknowledged that the current system employed by states is broken, and is more likely to actually enable identity theft and fraud rather than prevent it.

He and others on the panel referenced several initiatives that some states were currently undertaking to improve their driver's license systems. For example, Virginia and Florida adopted revised procedures since last year to prevent the types of abuses we all recognized since September 11. And many other state legislatures have adopted, and are still in the process of debating, various reform measures, which, I believe, are all steps in the right direction.

I was especially encouraged to hear that the states were willing and ready to work with the federal government to address this problem together.

At our hearing, the AAMVA representative also testified that:

Seventy-seven percent of the American public support Congress passing legislation to modify the driver's licensing process and identification security. And, we need Congress to help in five areas:

- (1) support minimum compliance standards and requirements that each state must adopt when issuing a license;
- (2) help us identify fraudulent documents;
- (3) support an interstate network for confirming a person's driving history;
- (4) impose stiffer penalties on those committing fraudulent acts;
- (5) and, provide funding to make this happen. Funding so states can help ensure a safer America.

Thus, following this hearing, I reached out to, and worked with a number of groups and individuals representing states, motor vehicle agencies, privacy advocates, immigrant communities, and the technology industry, to consider an appropriate federal legislation on this issue.

We also reached out to various agencies in the Bush Administration, including the Office of Homeland Security, to seek their input on legislation.

Then, in July of this year, President Bush unveiled his "National Strategy for Homeland Security." In that report, the President wrote:

Major Initiatives (State)

Given the states' major role in homeland security, and consistent with the principles of federalism inherent to American government, the following initiatives constitute suggestions, not mandates, for state initiatives.

Coordinate suggested minimum standards for state driver's licenses. The licensing of drivers by the 50 states, the District of Columbia, and the United States territories varies widely. There are no national or agreed upon state standards for content, format, or license acquisition procedures. Terrorist organizations, including Al-Qaeda operatives involved in the September 11 attacks, have exploited these differences. While the issuance of driver's licenses falls squarely within the powers of the states, the federal government can assist the states in crafting solutions to curtail the future abuse of driver's licenses by terrorist organizations. Therefore, the federal government, in consultation with state government agencies and non-governmental

organizations, should support state-led efforts to develop suggested minimum standards for driver's licenses, recognizing that many states should and will exceed these standards.

I fully agree with the President that the issuance of driver's licenses is within the province of the states. In fact, our bill explicitly recognizes and preserves the right of states to determine the qualification or eligibility for obtaining driver's licenses, the terms of its validity, and how the license should look.

But I also agree with the President that there is an important role for the federal government to play in assisting the states to address the national problem of fraud and abuse. I therefore believe this bill that we are introducing today strikes an appropriate balance between the states' authority and federal interests.

Our bill is narrowly drafted to improve the process by which licenses are issued. First, I note that there are two already existing federal programs that address driver's licenses.

The National Driver Register (NDR), which was first created by Congress in 1960 and revised in 1982, serves as a central file of state reports on drivers whose licenses have been suspended, revoked, canceled, or denied, or who have been convicted of serious traffic-related offenses. The NDR's primary purpose is to enable state motor vehicle agencies to share driver record information with each other so that they can make informed decisions about issuing driver's licenses to individuals, particularly those who move into their states from other jurisdictions.

The Commercial Driver License Information System is the second federal program, which was established by Congress in 1986, to keep problem commercial drivers off the roads, and to prevent traffic violations from being hidden behind multiple licenses.

Every state today participates in both federal programs, and all states currently share certain information with each other in order to make informed decisions before issuing driver's licenses.

However, the current limited scope of these programs leave a gaping loophole: One deals only with records of problem drivers, while the other deals only with records of commercial drivers. What about the records of non-problem drivers who are not commercial drivers?

Our bill closes this loophole by consolidating the appropriate functionalities of these two programs and by adding new security measures that would allow every state to check all other states' records of all drivers before issuing commercial or regular driver's licenses. This new process will help prevent states from issuing more than one license to any one individual, which will end forum shopping, abuse, and fraud.

In recognizing the federal responsibilities of this program, our bill would provide federal funding for the upgrades as well as direct federal funding to states to assist their continued participating in the new integrated system.

While the goals of the bill are specific and firm, we are also mindful of the jurisdiction of the states to regulate who is eligible to receive driver's licenses, and what the licenses should look like. We thus provide authority to the Secretary of Transportation to engage in a negotiated rulemaking which would include all the appropriate affected entities and individuals, in order to collectively develop the required minimum standards on the issuance process.

This program can be successful only if every state participates enthusiastically. Therefore, to provide maximum input from the states, the bill specifically requires that the Secretary consult with the states and entities representing the interest of the states, and, as necessary, with interested groups and individuals in developing consensus implementing regulations.

I should note, as the White House has, that many states should and will exceed these minimum standards set forth in this bill. So for states that are already above the curve, our bill provides federal grants to highlight innovative pilot programs designed to verify driver's identity, prevent fraud, or demonstrate the use of technology to create tamper resistant licenses.

Our bill also requires states to make their driver's licenses and identification cards more resistant to tampering, altering, or counterfeiting than they are today. But, again, the bill does not specify what those security features ought to be. Instead, it requires the Secretary of Transportation to engage in rulemaking with the states and with experts to collectively develop the required minimum standards for all states to adopt.

The bill also cracks down on internal fraud and bribery that, unfortunately, occur behind the DMV counters. We impose tough penalties for unauthorized access to or use of DMV equipment used to manufacture licenses, and also creates penalties for persons who fraudulently issue, obtain, renew, or transfer a driver's license. The bill also requires states to conduct internal audits of license issuance processes to identify and address these fraudulent activities.

Finally, our bill enhances privacy protections for license holders by significantly strengthening the Driver's Privacy Protection Act, which Congress last amended in 1994. The bill protects the privacy of driver's information by expanding the definitions of sensitive "personal information" and by tightening up the current set of permissible disclosures.

Additionally, under this bill, state motor vehicle agencies would be prohibited from disclosing or displaying social security numbers on any driver's license, motor vehicle registration, or any other document issued for the purpose of identification.

With federal financial and technical assistance and a narrowly tailored common-sense approach, I believe this bill can close the loopholes that continue to leave all of us vulnerable. By working together, we can assist states adopt a new system that will ensure integrity in the issuance process, integrity in the cards themselves, and protection of privacy of drivers across the country. I urge my colleagues to support this important bill.